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CURRENT TOPICS

Legal Aid

THE LORD CHANCELLOR has lost no time in responding to the suggestion made by the Select Committee on Estimates that an inquiry should be made into the reasons why the percentage of successful cases conducted under the Legal Aid Scheme has fallen. The Lord Chancellor proposes to conduct his inquiries through the judges, the officers of the Supreme Court, The Law Society and his Advisory Committee, and he will ask his Advisory Committee to publish the results in their comments on the next report of The Law Society on the operation and finance of the Scheme. The Lord Chancellor has also made an observation on the continued existence of the Divorce Department. It appears that the average saving on each case conducted by the Department is now only about £27, but the Lord Chancellor hopes that there will be greater savings than were previously considered possible as the result of advice which has been given by the Organisation and Methods Division of the Treasury. We are not surprised that the Lord Chancellor has agreed with the Select Committee that limited certificates should be issued in cases of doubt. We still think that this practice is one of the greatest safeguards against abuse. More questionable is the suggestion that greater care should be taken in issuing certificates to plaintiffs in actions for damages where the defendant's means are likely to be inadequate. It is wasteful in one sense to spend powder and shot on men of straw, but there is much to be said for having a judgment even against a man of straw: this is a matter on which it is difficult to dogmatise and it should be left to the good sense of certifying committees.

New Rules

THE Rules of the Supreme Court (No. 2), 1956 (S.I. 1956 No. 1191 (L. 12)), make several amendments to the White Book, of which perhaps the most practical is the revision of the hours of opening of the Central Office and other offices of the Supreme Court. The new hours, which, with the rest of the amendments, come into operation on 1st September, are set out in full on p. 622 of this issue. In Ord. 30, r. 7, para. 1, the time within which a party to whom a summons for directions is addressed may serve the notice specified in the paragraph is changed from fourteen days of service to not less than seven days before the hearing. Order 31 has a new rule added which enables an order for discovery or inspection to be revoked or varied, while Ord. 45 has a rule added which

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enables a deposit account to be attached in spite of the fact that there is a condition that a receipt for the money must be produced before it is withdrawn. Order 54C is amended so as to exclude references to petitions, and a new Appendix P (set out in full on p. 622 of this issue) is substituted for the old.

Old Baileys for Lancashire

THE new Crown Courts at Liverpool and Manchester will open within the next few weeks, the former on 25th September and the latter on 8th October. They should do a great deal to relieve judicial congestion and delay in both cities and we are fortunate in the appointments of Mr. BASIL NEILD, Q.C., as Recorder of Manchester, and of Mr. NEVILLE LASKI, Q.C., as Recorder of Liverpool. The calibre of both these eminent leaders is such as to guarantee that the standards of the new Crown Courts will be of the very highest. More details about the new arrangements will be found on p. 622 of this issue.

Haldane of Cloan

IN her tribute in *The Times* of 30th July to Lord Haldane on the centenary of his birth, LADY VIOLET BONHAM CARTER recalled that he and her father started their working lives in London as young and briefless barristers, and a great and lasting friendship sprang up at once between them when they chanced to sit beside each other at a dinner in Lincoln's Inn. Haldane got the first brief, a case of a basement infested by black beetles. He and Asquith sat up together all night, Lady Violet wrote, "pooling their whole intellectual resources to cope with the problems it presented." It is an impressive thought, calculated to overawe the average common-law practitioner, that a future Lord Chancellor who was not only a great Hegelian but, on the authority of Field Marshal Earl Haig, was "the greatest Secretary of State for War England has ever had," should need a night of his own work to prepare a case about black beetles as well as a night's assistance from a future Prime Minister. Lady Violet did not tell us whether the combined efforts of these two promising young men won the case.

Gin Traps

THE 31st July, 1956, besides marking the end of the current legal year, was a day of great significance in the history of animal welfare in this country. Section 8 of the Pests Act, 1954, enacted that the gin trap shall be prohibited after 31st July, 1958, unless the Minister of Agriculture should take power *before* 31*st July*, 1956, to postpone the date of prohibition. That day having passed without the Minister having sought such power, it will follow that the gin trap will be illegal after 31st July, 1958. The Home Office Committee on Cruelty to Wild Animals (1951) stated that: "The gin trap is a diabolical instrument which causes an incalculable amount of suffering. Its sale and use in this country should be banned by law within a short period of time." We are grateful to the Universities Federation for Animal Welfare for reminding us of this important date.

CATEGORIES OF THINGS

THE relationship between actual things (or events) and the description of them in a contract or legal document has often caused disputes. The most common types of problem take the form of allegations of misrepresentation, breach of condition or warranty, or mistake. The truth is that words are not always adequate to describe fully things or events however verbose one might be; and from the practical point of view verbosity is the reverse of the draftsman's aim.

The recent decision of *Karsales (Harrow), Ltd.* v. *Wallis* [1956] 1 W.L.R. 936; *ante*, p. 548, illustrates this point in a way which shows that the matter is of fundamental importance; it is a decision which may have many repercussions. Briefly what happened was that *A* offered to sell a Buick car to *B* and after a trial *B* agreed to have the car but needed financial assistance. It was arranged for *C* to finance the transaction in the usual hire-purchase manner whereby *C* bought the car from *A* and let it on hire-purchase to *B*. When the date for delivery arrived, *A*, having been paid, delivered what can only be described as the same chassis and to all external appearances the same car, but with either a different engine which was a wreck, or, having removed essential parts from the existing engine, different tyres and so on. The vehicle was towed to the hirer's premises late at night. The hirer refused to pay any instalments under the agreement, and, *C* having assigned his rights to *D*, *D* sued for arrears. *D* relied on a clause in the agreement of hire which stated that no condition or warranty was given as to the vehicle being roadworthy or as to its age, condition or fitness for any purpose. nor were they implied.

Disparity a question of degree

The first question in a case like this is: has the seller (or letter to hire) delivered what he contracted to deliver? Was this the Buick car seen and tried earlier? This is a question of fact and one involving problems of degree. One of the missing items was the chromium strip round the body. Suppose this had been the only item missing, would it not have been the same car? The radio had been removed; suppose both these had been missing, would it have been the same car? One feels the vital fact related to the engine: the cylinder head had been removed and two pistons were broken as well as the valves being burnt. The essential quality of a car is that it provides a means of transport, and hence if the engine will not function, and we may add cannot be made to function except at unreasonable expense and trouble, then one may say that the item is not a car. One might, of course, agree to buy a vehicle in its non-functioning state, and hence it was equally material that the car had been originally shown as in working order.

Breach of fundamental term

The next question is, in spite of the disparity between the thing and its delineation in the contract, does the clause excluding liability for any breach of condition or warranty

protect the supplier? On this point we are in a realm where virtually new law is being created. The Court of Appeal accepted, *inter alia*, a *dictum* of Devlin, J., in *Smeaton Hanscomb & Co., Ltd.* v. *Sassoon I. Setty, Son & Co.* (*No.* 1) [1953] 1 W.L.R. 1468, where it was said that some provisions of a contract are *more fundamental than conditions*. Hence a clause protecting one from a breach of condition or breach of warranty does not give protection from a breach of a fundamental term in this narrow sense.

That this is a new principle is evident from a consideration of *Wallis, Son & Wells* v. *Pratt & Haynes* [1911] A.C. 394, where a condition was treated as fundamental. But the apparent conflict may well be resolvable, though it would be out of place to discuss it in this short note. The principle to be derived from the *Karsales* case and the *dicta* from other cases quoted in the judgments is that a clause in the contract cannot protect against a breach of a fundamental term. It is as though the contract had not been performed.

If this argument had been put forward in *L'Estrange* v. *Graucob* (*F.*), *Ltd.* [1934] 2 K.B. 394 we may safely assert that a different decision would have been come to.

How far may a ship deviate?

The problem also arises in other connections. There are, for example, several shipping cases where a ship has deviated from its planned route and the shipowners have sought to rely on a clause in the charterparty apparently allowing the ship to deviate and call at other ports. The decisions seem to show that such clauses will be construed as not to cover a serious deviation so that the voyage is virtually a different voyage (*Leduc* v. *Ward* (1888), 20 Q.B.D. 475; *Margetson* v. *Glynn* [1892] 1 Q.B. 337; on appeal [1893] A.C. 351). This point is again going to the House of Lords in the recent dispute over the "Caspiana" (*Renton* v. *Palmyra* [1956] 2 W.L.R. 232; *ante*, p. 53); and it will be of interest to see whether further support to this conception of what is fundamental is given by that august body. L. W. M.

A Conveyancer's Diary

LAND CHARGES: REPORT OF ROXBURGH COMMITTEE—I

THE report of the Committee on Land Charges under the chairmanship of Roxburgh, J., was published last month, and its salient points were noticed in this Journal a fortnight ago (see p. 574, *ante*). Three questions were put to the Committee, and I propose in this and the two next following "Diaries" to set down the answers which the Committee has given to these questions (where it has found it possible to give an answer at all), and, briefly, the way in which each of the problems presented itself to the Committee. Legislation will, presumably, be promoted shortly to translate the Committee's recommendations and suggestions, or some of them, into law, but meanwhile an examination of the report, either *in extenso* or at second hand through articles such as these, can be recommended to every lawyer interested in the practical side of our system of real property law. The Committee was a strong committee, and it received evidence from a strong body of witnesses: both branches of the profession, teachers of and writers upon the law, central and local government servants, a commercial company which deals largely in land, and a well-known firm of auctioneers and estate agents were among them.

The first question put to the Committee was this: to consider the position which will arise on the 1st January, 1956 (the Committee was appointed in October, 1954), under the Law of Property Act, 1925, and the Land Charges Act, 1925, when the Land Charges Register will have been in existence for more than thirty years and a purchaser of land under an open contract may not be entitled to call for a root of title earlier than that period of time; and to advise whether any, and if so what, amendments of the law ought to be made.

The problem raised by this question, the Committee points out, is peculiar to charges registered in the Land Charges Register affecting unregistered land. That is so because such charges are registered against the names of owners of land, and not against the land itself. Local land charges and charges affecting registered land, being registered against the land, do not contribute to this problem. But in the case of charges registered against owners it is impossible to search adequately without knowing the names of the successive owners.

Section 198 (1) of the Law of Property Act, 1925, provides that the registration of any instrument or matter under the provisions of the Land Charges Act, 1925, in any register kept at the Land Registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter and of the fact of such registration to all persons and for all purposes connected with the land affected as from the date of registration or other prescribed date and so long as the registration continues in force. Since the 1st January, 1926, thirty years has been the period over which title has to be shown under an open contract, and accordingly it is now possible for a purchaser of land to be deemed to have actual notice of a charge registered against a previous owner whose name the purchaser has had no means of finding out. True, s. 44 (8) of the Law of Property Act, 1925, provides that a purchaser shall not be deemed to be affected with notice of any matter of which, if he had investigated the title prior to the period of commencement of title fixed by the Act, he might have had notice unless he actually makes such investigation; but the report observes that, although the point has never been decided, the better opinion is that s. 44 (8) provides no defence against "the situation which has now arisen and which cannot be defended upon any basis of jurisprudence."

The framers of the 1925 legislation cannot, in the Committee's view, be supposed to have been blind to this shortcoming in their system. It is assumed that they regarded the registration of charges against the land, in the case of unregistered land, as unnecessary, in the belief that the title to all land would be registered in the next thirty years. Now that period has come to an end and doubt is expressed whether registration of all titles will be completed even within the next thirty years.

An insoluble problem

The Committee regards the situation which has now arisen as theoretically wrong and one which ought to be amended unless any practicable amendment would be likely to produce ills more serious than that which it was designed to cure, and it is in that spirit that this problem was investigated: if even one case occurred in which a purchaser suffered loss owing to the existence of a charge which he had no means of discovering, that would be an injustice; on the other hand, it would be unjust to deprive owners of registered charges of rights which the Act of 1925 has given to them unless proper safeguards could be devised. This is the dilemma which faced the Committee, and the Committee has found it insoluble, until the problem solves itself upon completion of the registration of all titles to land.

But, as the Committee points out, few cases of injustice are in practice likely to occur, and any general attempt to forestall them now would give rise to more serious and widespread injustice. For in practice very many purchasers have, before the 1st January, 1956, been willing to accept by contract less than thirty years' title and have thus voluntarily taken the risk which purchasers under an open contract cannot now avoid; and yet no case had come to the Committee's notice where any charge registered before the commencement of the title and not referred to in the later documents of title had afterwards come to light.

To the first question as put to it the Committee therefore gave a wholly negative answer. One solution proposed and considered was to convert the existing system from a system of registration against the names of owners into a system of registration against the land affected. But with some two million land charges on the registers this was dismissed as administratively impracticable; and other sound reasons for rejecting this proposal are given in the report. But while unable to offer any radical solution of the problem put to it, the Committee does make certain suggestions on matters of detail which are intended to afford a partial alleviation of the present position.

The various classes of charges registered in the Central Register vary both in the degree of risk of hardship which in the context of this problem they may involve and in their relative numbers. As to the possibility of hardship, this is largely related to the length of time during which the charge may endure. As to numbers, figures are given in the report which show that out of over 92,000 registrations in 1954, over 46,000 were of restrictive covenants, over 20,000 were of puisne mortgages, and over 13,000 were of estate contracts. The Committee considered each of these important classes at some length.

Restrictive covenants

Of restrictive covenants it is observed that these are almost always created as part of the terms of a disposition of the land affected and are therefore shown in the abstract of title. Restrictive covenants do not tend to be forgotten when the instrument creating the covenant is older than the root of title, because a vendor of restricted land may remain liable unless he protects himself adequately when he comes to sell. The innumerable restrictive covenants made before 1926, which are not capable of registration, depend upon this circumstance for their enforceability. In the circumstances the Committee suggests (it hesitates to describe the suggestion as a recommendation) that restrictive covenants should, after an appointed day, cease to be capable of registration.

Unprotected mortgages

As to the next largest class of charges, mortgages not protected by deposit of documents, at present they fall into Class C (i) as puisne mortgages if legal, and into Class C (iii) as general equitable charges if equitable. No suggestion is made in regard to these charges which would tend to the solution of the problem involved in the first question put to the Committee "now or ever." But the suggestion is thrown out in passing that all mortgages not protected by the deposit of documents, whether legal or equitable, should perhaps be registered in Class C (i), and that Class C (iii) should be abolished. Class C (iii) registrations in the specimen year (1954) numbered under 3,000, compared with the 20,000 and more of registrations under Class C (i).

Estate contracts

Finally, estate contracts. The Committee divides these into three groups: (1) ordinary contracts for sale or lease; (2) contracts providing for payment of purchase money by instalments; and (3) options in leases. Ordinary contracts for sale or lease are transitory and do not contribute to the problem. As to (2), the Committee observes that a practice has grown up in certain areas of allowing purchasers to take possession under a contract providing for the payment of the purchase money by instalments spread over a number of years and not executing a conveyance until all the instalments have been paid; estate contracts of this kind may well operate for many years, but in the Committee's view the period is unlikely to exceed thirty years. Options in leases may well endure for more than thirty years, but there is no problem here because they are squarely on the title. Accordingly, the Committee suggests that options in leases should no longer be capable of registration. And, in this general connection, the Committee thinks that any convenient opportunity should be taken to make it clear that an agreement to create a mortgage, if protected by deposit of documents and so not registrable as an equitable charge, is not capable of registration on the footing that it constitutes an estate contract. Finally, the Committee suggests that Class D (iii) (Equitable Easements) might be abolished. Contracts to grant legal easements can, and in the Committee's view should, be registered as estate contracts.

"A B C"

Mr. R. H. Ellis Davies, Under-Sheriff for Caernarvonshire and chairman of the North Wales Rent Tribunal, has been appointed police prosecutor for the Bangor Division.

Mr. Alan Jenner has been appointed assistant solicitor to Newcastle Corporation.

Mr. J. P. Murphy, Q.C., Attorney-General, Zanzibar, has been appointed Puisne Judge, Kenya.

Mr. Cornelius Pritchard, solicitor, of Llandudno, has been appointed police prosecutor for the Conway, Llandudno and Nant Conway Division.

Mr. T. T. Russell, formerly Puisne Judge, Federation of Malaya, has been temporarily appointed Judge of the High Court, Somaliland Protectorate.

Mr. A. H. M. Smyth, assistant clerk to Devon County Council, has been appointed deputy town clerk of Wolverhampton in succession to Mr. R. J. Meddings, with effect from 17th September.

Mr. John V. Trewavas, an assistant solicitor in the Plymouth Town Clerk's department, has been appointed senior assistant solicitor to the Middlesbrough County Borough Council.

Landlord and Tenant Notebook

EJECTMENT PROCEEDINGS NEGATIVING WAIVER

TEXT-BOOKS, after carefully explaining the law relating to waiver of forfeiture, dutifully add a statement to the effect that the acceptance of rent, normally fatal to the landlord's case, will not prejudice him if that acceptance occurs after ejectment brought, or after issue of a writ for possession; the institution of proceedings, issue of a writ, etc., evidences an unequivocal election to exercise the option to avoid the lease.

It has been suggested to me that this may not be quite accurate; a landlord might *issue* a writ, but not serve it, or not have served it when the tenant comes along with some rent. If the landlord accepts this, can the tenant rely on waiver?

I do not think that the point has ever arisen, and the search for an answer is rendered more difficult by the circumstance that most of the authorities on unequivocal election were decided under conditions which do not obtain to-day. Not only had the Law of Property Act, 1925, s. 146, forfeiture notice not been invented; procedure differed in that a forfeiture action was hardly a distinct species of the action in ejectment and in that action all that the plaintiff had to do, until particulars were sought, was to claim that the land was his.

The earliest reference to the matter appears to be a very short judgment by Abbott, C.J., in *Doe d. Morecraft* v. *Meux* (1824), 1 C. & P. 346. It was pleaded in defence to an action based on alleged forfeiture that the landlord had received rent since the "bringing" of the ejectment. The learned chief justice said: "I am clearly of the opinion that the receipt of rent, after an ejectment is *brought* on a forfeiture, is no waiver of such forfeiture."

Effect of consent

The above was quoted with approval by Parke, B., in *Jones* v. *Carter* (1846), 15 M. & W. 718, the facts of which were somewhat out of the way but none the less capable of affording some contribution to the solution. The defendants, holding an underlease of mines, were found to have committed breaches of covenants and thereby to have incurred forfeiture in 1844 and 1845. On 25th March, 1845, they paid the half-year's rent due in advance on that day. On 19th May the landlord *served* them with a declaration in ejectment, which notified them to appear in Trinity term. Their immediate reaction was to consent; and while no exact dates could be given it appeared that they at some time entered a plea to that effect, though on 3rd December they obtained leave to withdraw it. But at all events, it was clear that in July the tenants on the one hand were not making any use of the property, the landlord on the other hand had not taken physical possession. Then, in January, 1846, the landlord sued for breaches of covenant and the rent due, or which would have been due, on 29th September, 1845—to be met with the defence that the plaintiff had in May, 1845, elected to treat the defendants as trespassers.

The question was, as Parke, B., said, whether the lease existed on, or had been put an end to on, 29th September, 1845; and he considered that it had. The reasoning was that it had been rendered invalid by some unequivocal act, *indicating the intention* of the lessor to avail himself of the option given to him, *and notified* to the lessee, after which he could no longer consider himself bound to perform the other covenants in the lease.

Payment under Common Law Procedure Act, 1852, s. 212

The decision in *Toleman* v. *Portbury* (1872), L.R. 7 Q.B. 344, was mainly concerned with other matters; as far as that under discussion is concerned, it was held (by nine judges in the Exchequer Chamber) that payment into court of arrears of rent, which arrears were but one cause of forfeiture, would not effect a waiver of other breaches. The writ was issued on 11th April, 1870; a tender of rent and costs was refused and the money paid into court. Kelly, C.B., gave us the following *obiter*: "It may be contended (though it is not necessary to the decision in this case) that the *bringing* of ejectment and *carrying it to trial* . . . was a conclusive election." Dealing with a similar point in *Evans* v. *Enever* [1920] 2 K.B. 315, Coleridge, J., spoke of the bringing of the action as irrevocable election.

Distress after writ

Rather more illuminating were observations made by Willes, J., in *Grimwood* v. *Moss* (1872), L.R. 7 C.P. 360. The plaintiff issued a writ for ejectment on 21st July, 1871; in September he levied distress for rent due up to 24th June. The learned judge held that a right of re-entry is referred back to the earliest period, the writ being simply the equivalent of the ancient "entry." Such entry could have been justified, hence the subsequent distress (though it might well be found—in other proceedings—to have been unlawful and actionable) could not effect a waiver. It will be remembered, of course, that the Conveyancing Act, 1881, s. 14 (1), now replaced by the Law of Property Act, 1925, s. 146 (1), had not been enacted at the date of that judgment.

Date from which mesne profits assessed

None of the authorities cited—and the same can be said of others—actually decided the point raised. Abbott, C.J., had no occasion, in *Doe d. Morecraft* v. *Meux*, to consider the case of an unserved writ. At first sight, Parke, B.'s ". . . and notified to the lessee" in *Jones* v. *Carter* would support the contention that rent could not safely be accepted; as would Kelly, C. B.'s ". . . and carrying it to trial" in *Toleman* v. *Portbury*; but it is arguable that mention of these facts was not essential to the judgments. And Coleridge, J.'s utterance in *Evans* v. *Enever*, and Willes, J.'s reasoning in *Grimwood* v. *Moss*, tend to support the opposite conclusion.

Further support for the latter can, I think, be found in an authority which was not actually concerned with irrevocable election, but which decided that, on forfeiture, mesne profits were to be assessed from the date of the writ: *Elliott* v. *Boynton* [1924] 1 Ch. 236 (C.A.). The cause of forfeiture was unauthorised sub-letting (first made relievable by the Law of Property Act, 1925) which had occurred on 20th October, 1919, and first come to the plaintiff's notice in March, 1922; he issued the writ on 12th May, 1922, and no appearance was entered. The master assessed mesne profits as from 20th October, 1919, Sargant, J., held that

they should be assessed only from the date of the writ, and so did the Court of Appeal. But, while the substantial question was whether the landlord's right had become vested before or on that date, some light was thrown, indirectly, on the question whether the actual issue of the writ, by determining the relationship, was irrevocable election. And while we find, in Warrington, L.J.'s judgment, the statement that the wrong for which mesne profits are awarded—the withholding of possession after the determination of the lease —was "committed upon and not before *the service* of the writ," the same judge gave the *issue* of the writ as the modern equivalent of actual entry earlier in his judgment; Pollock, M.R., said that the issue of the writ altered the possession of the tenant (making him a trespasser); Astbury, J., described the issue of the writ as the unequivocal act evidencing the landlord's intention to take advantage of the proviso. It is, I agree, still possible to contend that, as this was not the point in dispute, more importance must be attached to Warrington, L.J.'s "service of the writ" than to the references to its mere issue. But it seems that the answer would be that it is not possible even to issue a writ without somebody knowing about it, and thus without evidencing an intention to enforce the condition defeasant constituted by the proviso for re-entry.

R. B.

HERE AND THERE

VISIT TO LONDON

THE Central Hall of the Law Courts is indeed a Salle des Pas Perdus, empty and aimless and echoing only to the uncertain steps of foreign tourists and indigenous trippers asking one another in every language and accent where they are and, if this isn't a church, what can it be? They look unapprehensive enough, but who knows what forebodings they are secretly suppressing in their breasts if they have read and believed the vice and gangster scare that was flaring across the newspapers not long ago. One would like to know how many of those calm, if rather puzzled, exteriors mask apprehensions like those of the holiday-maker from Weston-super-Mare who was recently fined £8 for carrying an offensive weapon, a nine-inch bayonet, in Slough High Street. He told the police: "I went to London and thought I had better take it with me to defend myself. You know what it is like in London." At this rate soon the outside world's idea of a typical Londoner will be a character with a face criss-crossed with knife scars, like the faces of the old-time German university students slashed with duelling scars. The only visitors who will feel safe in our streets will be the Highlanders who will, no doubt, for sentimental reasons, be allowed to wear their dirks in their stockings without being charged with carrying an offensive weapon. Tourist agencies planning trips to London from anywhere but Scotland will provide special courses in Judo or unarmed combat.

TELE-HYPNOTISM

ON the other hand, just as we in London are bracing ourselves to face a future of raw violence and general street fighting, we may well find that events will play their usual trick on our expectations. Criminal violence may receive its death blow just from the quarter which was popularly supposed to nourish it. The portent comes from Luton, for the Chairman of the Luton Borough Juvenile Magistrates has unexpectedly declared in favour of television as one of the most important factors in reducing juvenile crime. Hitherto the cry has been that the children sitting up late and neglecting their homework to watch undesirable programmes were being steadily corrupted through their eyes and ears. But at Luton at any rate, where juvenile crime is less than half what it was in its peak year, 1951, they believe that television has a great deal to do with the decrease. The chain of causation, according to the chairman, runs something like this—more prosperity, more television sets and (despite late nights watching programmes which children shouldn't see) a generation of boys and girls who stay at home and don't roam the streets. So the next generation, instead of running wild in active violence, may lapse into a blameless inactivity, watching the shadows on the screen, as Plato's man in the cave watched the shadows on the wall, with their backs turned to life and its three-dimensional realities. Outside in the streets a diminishing band of ageing Teddy men will racket feebly whenever they can slip out of the beam of the police rays controlled from a central switchboard at Scotland Yard. The trouble with hypnotism by a shadow show as a means of keeping people out of mischief is that it keeps them out of well doing and human experience, too. If that's the best remedy Luton can proclaim for keeping children out of the courts, Luton is proclaiming it through massed hats.

OVER TO U.S.A.

IN the United States of America, where everything, steaks, skyscrapers, sonatas are louder, or larger, or both, than anywhere else, so is crime and so is criminal procedure. In its early stages is the trial in New York of eight men charged with the theft, six years ago, of $1,218,000 (or not very far off half a million pounds), the biggest robbery in American criminal history. The van that took the eight heavily handcuffed men to court was entirely surrounded by police cars for its half-mile trip. No other traffic was allowed on the streets and a police officer stood at every corner. The court room is on the seventh floor and only two lifts were allowed to stop there. The representatives of the public were limited to eleven, but no less than 2,000 potential jurymen were summoned in batches of 100 a day on account of the exceptional difficulty of making up the panel. Cases may be won or lost in the States on the empanelling of the jury and the battle of the challenges is apt to be long and violent. But in case you should think that crime dominates the American scene, another case illustrates the way that chivalry towards women goes further in America than anywhere else. A waitress in a restaurant and the chef had an argument, and she slapped his face. He slapped her back and she brought an action partly for damages but also one suspects for the last word. She recovered both from the court at Elizabeth, New Jersey, which awarded her the equivalent of some £1,700 and in effect ruled that a man has no right to hit back when a woman hits him. Women in industry did not "forfeit their natural right to considerate and courteous treatment at the hands of the opposite sex." So at any rate half America's citizens are obliged by law to follow the Scriptural precept of turning the other cheek to the other half. That's something, anyhow, in a world sliding into paganism.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Rent Acts Reform

Sir,—I was interested to read under Current Topics (28th July, 1956, *ante*, p. 556) that the managing director of the Land and House Property Corporation, Ltd., had drawn attention to the case of tenants of shops who reside as tenants in rooms over the shop and who insist on their right to pay a controlled rent.

The remedies suggested by you might well be fair for fixing the rent, but what of the tenant? I wrote to you in December, 1954 (published 25th December, 1954), on the subject of combined premises, pointing out the hardship likely to be caused to tenants of this type of premises by s. 43 (1) (*c*), Landlord and Tenant Act, 1954, which excluded the right of this type of tenant to apply for a new lease. I have endeavoured to negotiate several new leases on behalf of tenants since that time but have usually met with refusal. The landlord cannot be blamed; not only can he hope to take advantage of the goodwill built up by the tenant, but if a new lease is granted at a rent in excess of the recoverable rent, albeit the enhanced rent is fair by present conditions, the tenant might afterwards refuse to pay anything but the recoverable rent. There may be ways and means of "getting around the Act" but the landlord is usually reluctant to enter into a lease which may be open to suspicion.

In my humble submission the only way is to have subs. (1) (*c*) deleted from s. 43 of the Act; this would enable the landlord to obtain a higher rent and the tenant to obtain a new lease.

R. W. Bennett.

Aldershot.

TALKING "SHOP"

August, 1956.

Wednesday, 1st

Recently I have been engaged upon one of those exercises of determination of a life interest in settled property, more generically but no less graphically known in this office as trust-busting. The old lady was ninety-one, and her two daughters, mere youngsters (comparatively) on the hither and thither sides of seventy, wished to see the transaction through as rapidly as possible. The old lady's birth certificate was obtained—not without difficulty, for she could not remember exactly when she was born—and it showed that the next anniversary lay some two months ahead. Hence the idea—mistaken, as it turns out—that it might save some stamp duty if the release of her life interest were deferred until she were ninety-two.

I seem to remember having heard it said that actuaries award bonus marks to the very aged, on the principle, one supposes, of the creaking gate. And so it turns out. The Carlisle Mortality Table shows that an annuity on a single life decreases steadily in value from age seven to age ninety-one inclusive, but it then improves in value progressively from age ninety-two to ninety-five, when it reaches the peak of a little Indian summer, and then starts to decline again from ninety-six onwards. The following figures extracted from the 5 per cent. Carlisle table (printed at pp. 270–271 of Inman's Tables, 33rd ed.) will illustrate the point:—

Age	5 *per cent. Factor*	
7	16·790	
25	15·303	
40	13·390	
60	8·940	
90	2·339	
91	2·321	
92	2·412	Upward trend.
93	2·518	
94	2·569	
95	2·596	
96	2·555	
97	2·428	

Normally, of course, all parties concerned are anxious to get the transaction through as quickly as possible in order to start the five-year period running for estate duty exemption, and in such cases a relatively small saving of stamp duty is neither here nor there. But in the case cited the trust fund had already borne estate duty on the death of the husband; it should thus be exempt from a second claim for such duty on the death of the wife under the familiar spouse exemption. In parallel cases where no saving of estate duty is to be expected and the funds are large, the point about elderly life-tenants may be just worth noting, but it is perhaps of more general than practical interest.

Tuesday, 7th

In May of this year (*ante*, p. 374) I mentioned the case of Mrs. *V* and the trustees of her late husband's will, who wished to sell a controlled house with vacant possession but could find no way of compensating the statutory tenant from capital of the trust.

A correspondent has very kindly suggested a solution of this problem, which, as I see it, is not only unobjectionable from the standpoint of the trustees, but serves to cut the Gordian knot. What he suggests is this: that the tenant should become a purchaser, and resell to the sub-purchaser at a price which would take care of the compensation; in other words, the tenant's compensation should take the form of a profit on resale. Thus, if we assume that £*y* is the agreed compensation for disturbance (this would correspond with the sum of £600 mentioned in my earlier note) the trustees would sell to the tenant at £*x* and he would resell at £($x + y$).

On the principle erroneously attributed to Mrs. Beeton it still remains to catch (or, if the term is too strong, to find) your sub-purchaser, so that any arrangements made between the trustees and the tenant must be tentative. Presumably the trustees would have to meet the tenant's legal costs incidental to the sale or increase the compensation (i.e., profit on resale) to allow for them. Since it is questionable whether the trustees have any power to pay the tenant's costs as such, it would probably be best to leave it to him to pay them, adjusting the compensation to cover them.

I am not quite clear about the nature of the instructions that would be given to the house agents employed to find the sub-purchaser, though this is perhaps a minor detail. I take it they would be acting for the tenant as vendor-principal and it is certainly his name that they would have to pass to the sub-purchaser at the proper stage. But if the trustees are to retain control of the price (which obviously they must do, if it is to cover their own profit as well as the tenant's compensation and incidentally the house agents' commission as

well) it is to them that the house agents ought to look for their instructions. No doubt it would prove helpful—*pace* the recent critical observations of Danckwerts, J., in *Goody* v. *Baring*—if the tenant happened to find it convenient to employ the same solicitors as the trustees, thus as it were adopting the same chain of command.

It certainly does seem that, by following some such procedure as my correspondent advocates, the trustees should contrive to escape from the dilemmas of the Settled Land Act. In particular they do not have to ask themselves whether they are empowered to pay for the surrender of a statutory tenancy, and the question of debiting capital or income cannot arise.

THURSDAY, 9TH

One or two readers may also remember the case of Mr. *F*, who took a 999 years' lease but was precluded from investigating the title. I have two footnotes to add to that.

First, the insurance of the title turned out to be unexpectedly easy to negotiate and relatively cheap—cheaper in fact for the client than having it professionally investigated. Perhaps in our clients' interests we should make it a practice to insure in all cases and forgo the scale fee? It would have been an interesting point for discussion in the course of the controversy that raged of late in these columns, with honours, if I remember, more or less equally divided between Mr. Warburton's crusaders and the opposition sceptics. At all events, Mr. *F's* premium was finally agreed at £25, or say half per cent., for cover unlimited in point of time up to a maximum indemnity of £5,000. The underwriters have stipulated that we should apply to the Land Registry for a possessory title but we were proposing to do that in any event. The insured's successors in title are covered by the policy and are only required to give notice of their interest on a change of ownership.

It was a little difficult at first to persuade the underwriters that guaranteeing a freehold title involves anything more (or, more closely, anything *less*) than the risk of eviction by title paramount. So it was necessary to supply a few examples of matters commonly encountered on investigation of title, e.g., mortgages, debentures, licences, wayleaves, options to purchase, easements, rentcharges, estate contracts and restrictive covenants.

More difficult than this was the search for a formula that would, as it were, compress all that lies between the covers of Emmet and Williams into a couple of sentences. Eventually we hit upon the device of requesting an indemnity upon the same basis as the State guarantee of an absolute leasehold title under s. 83, Land Registration Act, 1925. (As to absolute leasehold titles, see s. 9; good leaseholds and possessory titles are, I would say, more familiar in practice.) Such a referential system of insurance, though neat enough, has all the obvious drawbacks inherent in referential legislation. For all I know there may be much better ways of solving this problem, and I should be much interested to learn of any methods adopted by readers who have been faced with it.

I will leave the other footnote to Mr. *F*'s case until to-morrow.

FRIDAY, 10TH

Mr. *F*, as I think I mentioned, is a client who likes to get down to bedrock with his questions, which is tiresome but probably wholesome for the solicitors concerned. For example, before deciding to insure he wanted to know why, if the freeholder's title proved defective, he could not bring an action against them for damages? The answer is to be found in Woodfall's Landlord and Tenant, 25th ed., at pp. 675 and 676, though it was some time before I ran it to earth. The relevant paragraph, which is numbered 1540, is headed "Lessee put on inquiry as to title and restrictive covenants of lessor," and it opens with the statement that a lessee is a purchaser *pro tanto* to whom the maxim *caveat emptor* applies. Then follows a most interesting disquisition on the unexpected subject of the covenant for quiet enjoyment, a matter that is not perhaps so very obviously germane to Mr. *F's* question, though it proves to be vital to it.

Most of us, I suppose, learnt as law students that the covenant for quiet enjoyment affords little security to a tenant, but is it always realised that it operates as a protection to the landlord? The reason is that the express covenant is almost invariably restricted to interruption or disturbance by the landlord "or any person lawfully by, under or in trust for him" or words to that effect. Such a covenant supplants any implied covenant and is expressed in such terms that it affords no protection to a lessee against eviction by title paramount to that of the lessor.

The learned editor of Woodfall points the moral at p. 676: either investigate the title or obtain an unqualified covenant for quiet enjoyment. But, as he says, "it often happens that an intended lessee fears to lose the proposed lease by asking either for an investigation of the lessor's title or for an unqualified covenant for quiet enjoyment; indeed, he generally knows that nothing of the sort would be agreed to," which was exactly Mr. *F's* case.

Since nobody as a rule pays much attention to the covenant for quiet enjoyment and it is commonly regarded as part of the mumbo-jumbo of conveyancers, I do find it rather interesting to learn that it lies at the core of this problem of title.

"ESCROW"

TRADE WITH EGYPT

In view of inquiries about the effect of the current financial restrictions on United Kingdom trade with Egypt, the Board of Trade have issued the following circular to firms and trade associations who are subscribers to the Board's Special Register Information Service: "Traders are advised that payment is not being made out of blocked Egyptian sterling accounts for goods exported to Egypt other than for goods delivered or shipped on or before 27th July and for goods in respect of which confirmed bankers' credits had been established on or before that date. There is no prohibition of exports to Egypt other than of arms and warlike material though export licences continue to be required for certain kinds of goods."

PREVENTION OF FRAUD (INVESTMENTS) ACT, 1939

The 1956 edition of the annual publication giving particulars of persons and firms authorised to carry on the business of dealing in securities has now been issued by the Board of Trade. The publication gives the names and addresses of holders of principals' licences, members of recognised Stock Exchanges and recognised associations of dealers in securities, and exempted dealers. It also gives particulars of authorised unit trust schemes.

Henry Cecil's book "Friends at Court" has been adapted for radio and will be broadcast on 19th August in the B.B.C.'s Light Programme.

SOLICITORS' ACCOUNTS (AMENDMENT) RULES, 1956

RULES DATED THE 13TH JULY, 1956, MADE BY THE COUNCIL OF THE LAW SOCIETY AND APPROVED BY THE MASTER OF THE ROLLS UNDER SECTION 1 OF THE SOLICITORS ACT, 1933

1. These Rules shall come into operation on the 16th day of November, 1956, and may be cited as the Solicitors' Accounts (Amendment) Rules, 1956.

The Solicitors' Accounts Rules, 1945, and these Rules may be cited together as the Solicitors' Accounts Rules, 1945 to 1956.

2. Rule 10 of the Solicitors' Accounts Rules, 1945, is hereby repealed and the following Rule substituted therefor :—

"10.—(1) Every solicitor shall at all times keep properly written up such books and accounts as may be necessary—

(*a*) to show all his dealings with—

(i) client's money held or received or paid by him ; and

(ii) any other money dealt with by him through a client account ; and

(*b*) to distinguish such money held, received or paid by him on account of each separate client and to distinguish such money from other money held, received or paid by him on any other account.

(2) The books and accounts referred to in the last preceding subsection shall include—

(*a*) either—

(i) a cash book in which to record every transaction involving client's money or other money dealt with by the solicitor through a client account, and a separate cash book in which to record every other monetary transaction of the solicitor relating to the affairs of his clients, or

(ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the solicitor through a client account and the other for recording every other monetary transaction of the solicitor relating to the affairs of his clients ; and

(*b*) either—

(i) a ledger in which to record every transaction involving client's money or other money dealt with by the solicitor through a client account and a separate ledger in which to record every other monetary transaction of the solicitor relating to the affairs of his clients, or

(ii) a ledger ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the solicitor through a client account and the other for recording every other monetary transaction of the solicitor relating to the affairs of his clients ; and

(*c*) a record showing particulars of all bills of costs delivered by the solicitor to his clients, distinguishing between profit costs and disbursements.

(3) (*a*) Any cash book or ledger required to be kept under this rule may be a loose leaf book.

(*b*) In this rule the words 'cash book' and 'ledger' shall be deemed to include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping.

(4) Every solicitor shall preserve for at least six years from the date of the last entry therein all books and accounts kept by him under this rule."

ACCOUNTANT'S CERTIFICATE (AMENDMENT) RULES, 1956

RULES DATED THE 13TH JULY, 1956, MADE BY THE COUNCIL OF THE LAW SOCIETY UNDER SECTION 1 OF THE SOLICITORS ACT, 1941 (4 AND 5 GEORGE VI, CAP. 46)

1. These rules shall come into operation on the 16th November, 1956, and may be cited as the Accountant's Certificate (Amendment) Rules, 1956.

The Accountant's Certificate Rules, 1946, the Accountant's Certificate (Amendment) Rules, 1954, and these Rules may be cited together as the Accountant's Certificate Rules, 1946 to 1956.

2. The Schedule to the Accountant's Certificate Rules, 1946, is hereby repealed and the following Schedule substituted therefor :—

"THE SCHEDULE

FORM OF ACCOUNTANT'S CERTIFICATE

NOTE.—In the case of a firm with a number of partners, carbon copies of the Certificate may be delivered provided Section 1 below is completed on each Certificate with the name of the individual solicitor.

1. Solicitor's Full Name

---

2. Firm(s) Name(s) and Address(es)
NOTE : All addresses at which the solicitor(s) practise(s) must be covered by an Accountant's Certificate or Certificates.

---

3. State whether practising alone or in partnership.

---

4. Accounting Period(s)
NOTE : The period(s) must comply with section 1 (5) of the Solicitors Act, 1941, and the Accountant's Certificate Rules, 1946.

Accountant's Certificate

In compliance with section 1 of the Solicitors Act, 1941, and the Accountant's Certificate Rules, 1946, made thereunder, I.....have examined the books, accounts and documents of the above-named solicitor relating to the above practice(s) produced to me and I hereby certify that from my examination pursuant to Rule 4 of the Accountant's Certificate Rules, 1946, and from the explanations and information given to me, I am satisfied that :—

(1) during the above-mentioned period(s) he has complied with the provisions of the Solicitors' Accounts Rules except so far as concerns—

(*a*) certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery ; I am satisfied that none of such breaches resulted in any loss to any client ;

(*b*) the matters set out on the back hereof ;

(2) having retired from active practice as a solicitor the said ceased to hold client's money on the

Delete clause not applicable

Particulars of the Accountant

Full Name.....

Qualifications .....

Firm Name .....

Address.....

Signature .....

Date .....

To the Registrar of Solicitors,
Law Society's Hall,
Chancery Lane, W.C.2."

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

BASTARDY: "ACCESS": MEANING

Kanapathipillai *v.* Parpathy

Viscount Simonds, Lord Radcliffe, Lord Tucker, Lord Cohen and Mr. L. M. D. de Silva

24th July, 1956

This was an appeal from a decree of the Supreme Court of Ceylon rejecting on a preliminary point the appellant's appeal from a judgment of the magistrates' court of Batticaloa dated 31st January, 1951, whereby it was adjudged and ordered that the appellant was the father of an illegitimate child born to the respondent on 24th May, 1950, and that he should pay to the respondent Rs.30 a month for the maintenance of the child. The respondent was married to one Mylvaganam, who left her and went to live with another woman. For five or seven years before the hearing the respondent and her husband had been living apart, and during that time three children were born to Mylvaganam's mistress. For present purposes the only relevant facts were: (1) that in August, 1950, the respondent was living at Kallar, where she had sexual intercourse with the appellant in his house in which she was residing with him and his wife and daughter; (2) that at that time Mylvaganam was living with his mistress and children at Annamalai, some three or four miles distant. The respondent's evidence, accepted by the magistrate, was that she had never seen her husband from the time he left her. On those facts the main issue in this appeal was as to the meaning of the word "access" in s. 112 of the Evidence Ordinance of Ceylon, with regard to which there had been over the years a considerable divergence of judicial opinion in the Supreme Court of Ceylon. Section 112 provided that: "The fact that any person was born during the continuance of a valid marriage between his mother and any man . . . shall be conclusive proof that such person is the legitimate son of that man, unless it can be shown that that man had no access to the mother at any time when such person could have been begotten. . . ." It was contended for the appellant before the Board that "access" in s. 112 meant no more than opportunity or possibility of intercourse, and that on all the evidence the respondent had not rebutted the presumption of legitimacy by proving that there was no opportunity or possibility of intercourse with her husband.

LORD TUCKER, giving the judgment, said that their lordships were satisfied that a test which considered merely the bare geographical possibility of the parties reaching each other during the relevant period must be rejected completely. On the authorities, the passage which was most helpful was that of Lord Eldon in *Head* v. *Head* (1823), Turn. & R. 138, at p. 140, with reference to the opinion of the judges in the *Banbury Peerage* case: ". . . where there is personal access, under such circumstances that there might be sexual intercourse, the law raises the presumption that there has been actually sexual intercourse and that presumption must stand till it is repelled satisfactorily by evidence that there was not such sexual intercourse." If the evidence in a case did disclose that at any time during the period there had been such personal access, then "no access" would not be established unless the presumption that sexual intercourse had in fact resulted were rebutted by evidence that displaced the presumption. Nothing less than cogent evidence ought to be relied on for that purpose. Applying that test to the facts as found by the magistrate in this case, it was clear that the absence of such personal contact as would give rise to the presumption of sexual intercourse was established, and his order consequently justified. The conclusion of "no access" was one which it was safe and proper for the magistrate to draw, and their lordships would accordingly humbly advise Her Majesty that the appeal should be dismissed.

APPEARANCES: *Stephen Chapman*, Q.C., and *John Stephenson* (*Darley, Cumberland & Co.*); the respondent did not appear and was not represented.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 584**

House of Lords

SHIPPING: COLLISION DUE TO NEGLIGENCE OF UNCERTIFICATED OFFICER: LIABILITY

The *Empire Jamaica*

Lord Morton of Henryton, Lord Merriman, Lord Goddard, Lord Cohen and Lord Keith of Avonholm

25th July, 1956

Appeal from the Court of Appeal ([1955] P. 259; 99 SOL. J. 561).

The *Empire Jamaica* of 3,538 tons gross collided with the *Garoet* owing to the negligent navigation of one, *S*, the officer in charge of the bridge of the former ship. He was a competent man with considerable experience as a watch-keeping officer, but was uncertificated. The ship, with the knowledge of the owners, was manned by an insufficient number of certificated officers in contravention of s. 4 (3) of the Hong Kong Merchant Shipping Ordinance, 1949. There was at the time a serious shortage of certificated officers at Hong Kong and, under certain regulations of 1951, owners could in certain circumstances obtain exemption from the provisions of the Ordinance. The owners obtained exemption only after the collision. *S* had worked in the ship nominally as boatswain, though actually as second mate, for four years. The master had full confidence in him and so reported to the owners' managing director. The owners brought an action against the owners of the *Garoet* claiming to limit their liability and contending that the collision took place "without their actual fault or privity," as provided by s. 503 of the Merchant Shipping Act, 1894. Willmer, J., whose decision was affirmed by the Court of Appeal, gave judgment for them. The owners of the *Garoet* appealed to the House of Lords.

LORD MORTON OF HENRYTON said that the judge held that the respondents had good reason to believe that *S* was fully competent to discharge the duties of second mate and the Court of Appeal agreed with him. Apart from the alleged breach of the Ordinance, there was no reason to differ from them. By s. 4 (3) of the Ordinance: "Every British ship shall . . . when leaving any port of the colony be provided with officers who possess certificates of competency of the grade appropriate to their station in the ship or of a higher grade, according to the following scale: (*a*) in any case, with a duly certificated master; (*b*) if the ship is one of 100 tons or upwards, with at least one officer besides the master holding a certificate not lower than that of only mate, or of second mate in the case of a sailing ship of not more than 200 tons; and (*c*) if the ship carries more than one mate, with at least the first and second mates duly certificated." Regulation 19A of the Merchant Shipping Ordinance, 1899, as amended by the Emergency (Merchant Shipping Ordinance, 1899) (Amendment) Regulations, 1951, provided: "The Governor in Council may, if he thinks fit, and upon such conditions (if any) as he thinks fit to impose, exempt any ship from any specified requirement contained in, or prescribed in pursuance of, this ordinance, or dispense with the observance of any such requirement in the case of that ship, if he is satisfied that that requirement has been substantially complied with in the case of that ship or that compliance with the requirement is unnecessary in the circumstances of the case, and that the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement." The appellants contended that the *Empire Jamaica* carried more than one mate, that only the first mate was duly certificated and that her owners committed a breach of s. 4 (3) (*c*) in shipping a second mate who was not duly certificated. They also submitted that if the owners had applied for exemption for *S* he would have been examined by an officer of the marine department in Hong Kong as to his fitness to discharge the duties of second mate and he might have been found unfit to discharge them or, at least, his attention would have been directed to the regulations for preventing collisions at sea, one or more of which he must have neglected when the collision occurred. The respondents submitted: (1) that they were not in breach of s. 4 (3) because

s. 4 (3) (*b*) allowed a ship of 100 tons or upwards to sail "with at least one officer besides the master holding a certificate not lower than that of only mate" and the master and first mate of the ship both held the requisite certificate; (2) that *S* was not a "mate" or a "second mate" within the meaning of s. 4 (3) (*c*); and (3) that, if they were in breach of s. 4 (3), that breach had no causal connection with the collision. His lordship was not impressed with the first two submissions, but the final submission was well founded. On the evidence, if the respondents had applied for exemption, it would either have been granted or they would have been told that it was not necessary, as they complied with s. 4 (3) (*b*). That construction of the Ordinance might have been wrong, but the result was that if the respondents had taken the step which, according to the appellants, they ought to have taken, *S* would still have been on duty when the collision occurred.

The other noble and learned lords agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *R. F. Hayward*, Q.C., and *Derek Hene* (*Waltons and Co.*); *Carpmael*, Q.C., and *J. B. Hewson* (*Hill, Dickinson & Co.*)

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 598**

COMPENSATION FOR LOSS OF PROFIT SUBJECT TO DEDUCTION FOR INCOME TAX

West Suffolk County Council *v.* W. Rought, Ltd.

Lord Morton of Henryton, Lord Goddard, Lord MacDermott, Lord Keith of Avonholm and Lord Somervell of Harrow
25th July, 1956

Appeal from the Court of Appeal ([1955] 2 Q.B. 338; 99 SOL. J. 354).

The West Suffolk County Council made a compulsory purchase order, which was confirmed by the Minister, for the acquisition of the greater part of certain leasehold factory premises owned and occupied by the claimant company for the purpose of the business of hatters' furriers. The council took possession of the premises in October, 1952, and it was not until mid-summer, 1953, that the company secured alternative accommodation for its business. For eight or nine months the company was unable to carry on its business and it claimed compensation *inter* (*alia*) for loss of profit in respect of specific orders during the interruption of its manufacturing operations. The Lands Tribunal awarded it £11,600 under this head without making any allowance for the company's liability to income tax on profits. On 27th April, 1955, the Court of Appeal, applying *Billingham* v. *Hughes* [1949] 1 K.B. 643, affirmed this decision. The council appealed to the House of Lords.

LORD MORTON OF HENRYTON said that on 8th December, 1955, the House gave judgment in *British Transport Commission* v. *Gourley* [1956] A.C. 185, overruling *Billingham* v. *Hughes, supra*. The reasoning in *Gourley's*, case *supra*, was equally applicable to the present case. The Lands Tribunal should have estimated, to the best of their ability, the amount of additional taxation which the respondents would have had to bear, if they had actually earned, during the period of nine months, the sum awarded to them, and should have reduced the award by that amount. In some cases there might be considerable difficulty in estimating the sum which should be awarded by way of compensation for disturbance if the incidence of taxation was to be taken into account but no great difficulty arose in the present case. It was for the respondents to prove their loss after taking into account the incidence of taxation. They could submit (*a*) a statement of the tax liability which they actually incurred in respect of their trading during the year in question, and (*b*) an estimate of the tax liability which they would have incurred in respect of their trading during the same year if they had made the profit of £11,600. When the Tribunal decided what were the right figures under (*a*) and (*b*), the net loss to the respondents would be £11,600 less the amount by which (*b*) exceeded (*a*). His lordship was not trying to lay down any general rule as to how the relevant figure was to be ascertained, nor did he say that the procedure outlined was the only possible procedure in this case. It was not necessary to express any final opinion on *Comyn* v. *A. G.* [1950] Ir.R. 142, as the present case was distinguishable from it. The appeal should be allowed and the case should be remitted to the Lands Tribunal to reconsider the amount of compensation awarded on the basis that it should not have excluded the element of liability to tax.

The other noble and learned lords concurred in allowing the appeal. Appeal allowed.

APPEARANCES: *Geoffrey Lawrence*, Q.C., and *Duncan Ranking* (*Sharpe, Pritchard & Co.*, for *A. F. Skinner*, Bury St. Edmunds); *Paull*, Q.C., and *Michael Chavasse* (*E. P. Rugg & Co.*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 589**

Court of Appeal

ESTATE AGENT'S COMMISSION: "BINDING CONTRACT": CONTRACT RESCINDED BEFORE COMPLETION OWING TO INNOCENT MISREPRESENTATION

Peter Long & Partners *v.* Burns

Singleton, Morris and Romer, L.JJ. 16th July, 1956

Appeal from Lord Goddard, C.J. ([1956] 1 W.L.R. 413; *ante*, p. 302).

By a contract in writing contained in a commission note and entered into between the defendant, the owner of a garage, and the plaintiffs, who were estate agents, it was agreed that the plaintiffs' commission should be payable upon their "introducing a person ready, willing and able to enter into a binding contract to purchase" the property. A purchaser signed a contract to purchase the property and paid a deposit after being informed by a representative of the plaintiffs that a town planning scheme then in force would affect the property only to a very limited extent. The representative did not explain to the purchaser that his statement was based on information given to him by the vendor. The purchaser, who subsequently discovered that the scheme would affect the property substantially and would in fact result in the buildings on the site being demolished, resiled from the contract before completion, and the contract was eventually cancelled by agreement between the parties on payment of a certain sum by the purchaser to the vendor. The plaintiffs claimed their commission, but the defendant refused to pay. In an action by the plaintiffs for their commission by way of damages for breach of contract, it was not contested that the purchaser had been induced to sign a contract by, *inter alia*, the statement made by the plaintiffs' representative.

SINGLETON, L.J., said that it was submitted on behalf of the plaintiffs that the contract was a binding contract until it was repudiated, and that the right to commission was established when the contract was signed. He (his lordship) agreed with the Lord Chief Justice that the words "binding contract" in the document on which the plaintiffs relied meant a contract which was enforceable in law. The contract could not be enforced by reason of the misrepresentation by the agents' representative as to the position under the Town and Country Planning Act, 1947. That was admitted. Hence the claim must fail. If the contract could not be enforced as against the purchaser, it was not a binding contract within the meaning of those words in the document on which the plaintiffs relied. Counsel relied on something in the nature of an estoppel and said that, as the information came from the defendant, she ought not now to be allowed to say that the agents' representation affected the position as against her; and that the agents' representative was not under any duty to the purchaser. He was at least under a duty to the defendant, and the making of a representation such as he made might well lead to trouble for her. Indeed, the representation made with such lack of knowledge as he had might well be said to have been made recklessly. There was no substance in this point raised by counsel. The appeal should be dismissed.

MORRIS, L.J., agreed. Commission was payable in a case of this kind when the contract was shown to be a binding contract in the sense that it could be enforced by the vendor against the purchaser. The result was that commission was not necessarily payable as soon as a contract was signed but only when it was shown to be a binding contract, and it might in many cases not be possible to prove that a contract was a binding contract until completion had taken place.

ROMER, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *Peter Dow and Quentin Dunnett* (*J. J. Dunnett*); *Conolly Gage* (*Torr & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1083**

Chancery Division

REVENUE: INCOME TAX: DEPOSIT ACCOUNT AT BANK

Hart (Inspector of Taxes) *v.* Sangster

Vaisey, J. 3rd July, 1956

Appeal from the Special Commissioners for Income Tax.

The taxpayer had for several years before 1951 kept a deposit account with his bank. In the first quarter of 1951, down to 16th March, 1951, the amount standing to his credit on such account was £20,496. On 17th March, 1951, he paid a further sum of £2,000,000 by cheque into the account, and on 30th March, 1951, he withdrew from the account £250,000. The arrangement as regards interest was that it was credited on half-yearly rest dates, 20th June and 20th December in each year, and it was calculated in the ordinary way on a day-to-day basis. The interest, when credited, became principal, and then, but not before, began itself to earn interest. It was not the practice to allow accruing interest to be withdrawn between the rest dates, but if an account was closed interest was calculated to the date of closure, credited as principal, and withdrawn. The rate of interest varied from time to time. Fourteen days' notice of withdrawals from the deposit account was required, and withdrawal without notice involved the customer in a loss of fourteen days' interest. The assessments to income tax under Schedule D made on the taxpayer for the years 1951–52 and 1952–53 amounted to £7,037 and £29,371 respectively. The main ingredient in the amounts assessed was the interest on the deposit account. These sums were reduced to £53 and £7,032 respectively by the Special Commissioners, who held, on an appeal by the taxpayer, that the taxpayer had not acquired a new source, or an addition to a source, of income when he made the deposit on 17th March, 1951, and that neither s. 21 of the Finance Act, 1951, nor s. 30 of the Finance Act, 1926, had any application to the income the subject of the appeal. The Crown appealed.

VAISEY, J., said that he had come to the conclusion that the word "source" in the context in which he had to consider it was indistinguishable in meaning from the word "origin." Both sides agreed that the source or origin of the interest on the £2,000,000 was to be found in some contractual relationship between the taxpayer and the bank, but they were not agreed as to what that contractual relationship was. The Crown's contention was that it was a new contractual relationship resulting from and brought into existence by the tender of the £2,000,000 by the taxpayer to the bank, and the acceptance of it by the bank from the taxpayer, and that such a new contractual relationship arose on each occasion when money was placed on deposit by a customer in a bank. The opposite view was that there was on 17th March, 1951, a subsisting pre-existent and continuing contractual relationship affecting whatever money was from time to time standing on the deposit account, and that there was no room for the conception of a series of contracts arising whenever a new deposit was made. The latter view had the superficial attraction of according with the popular view of the position. But it did not stand the test of analysis as the Crown's view did. The conception of a running contract was vitiated by the principle that a present contract to enter into a future contract or future contracts was in English law no contract at all. The contentions of the Crown were well founded and should prevail. Appeal allowed.

APPEARANCES: *Sir James Tucker*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *G. A. Grove* (*Hale, Ringrose & Morrow* for *Glaisyer, Porter and Mason*, Birmingham).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1105**

CHARITY: GIFT FOR LIMITED PERIOD: CY-PRÈS

***In re* Cooper's Conveyance Trusts; Crewdson *v.* Bagot**

Upjohn, J. 5th July, 1956

Adjourned summons.

By a conveyance dated 13th April, 1864, certain land and property were conveyed to trustees "their heirs and assigns for ever" in trust for the purposes of an orphan girls' home and upon failure of that trust the land and property in question were to be held in trust for the persons then entitled to certain real estate therein specified and the aforementioned "messuage . . . hereditaments and premises" were to be conveyed accordingly "and upon or for no other trust or purpose whatsoever." The home, which was the gift of one *H*, was forced to close in 1954 owing to lack of support. The present trustees of the conveyance issued a summons for the determination, *inter alia*, of the questions (1) whether the provision that on the failure of the trust for the home, the land thereby conveyed should be held in the manner specified in the conveyance (*a*) was void for remoteness, or (*b*) was a valid or effective trust; (2) if the trust failed, then whether the land comprised in the conveyance ought to be held upon such charitable trusts as the court might direct by way of scheme or whether it was held upon a resulting trust for the persons interested in the residuary real estate of the donor.

UPJOHN, J., said that it was clear that the gift over on failure of the trust to the persons entitled to the property was void as infringing the rule against perpetuities. The authorities established that where an absolute and perpetual gift to charity was made with a gift over on cesser which failed for remoteness or for some other reason, the original perpetual gift to charity remained; but that where there was a gift to charity for a limited period then the undisposed of interest reverted to the grantor. Here it was clear that the donor desired the charity to continue only while it could be carried on as an orphan girls' home. When that particular charity came to an end she evinced the clearest intention that the property was to go over to the non-charitable purpose mentioned in her will. Accordingly, this was a case where the donor intended a gift to charity only for a limited time and for a limited purpose. That period having come to an end, there was an interest in the donor remaining undisposed of; that was held on trust for her estate by way of resulting trust. Declaration accordingly.

APPEARANCES: *W. T. Elverston* (*Kingsford, Dorman & Co.*, for *Milne, Moser & Sons*, Kendal); *Nigel Warren* (*Peacock and Goddard; Hunters; Hillearys; Farrer & Co.; Evans, Barraclough and Co.; Leman, Harrison & Flegg*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1096**

Out of 532 candidates for The Law Society's Final Examination, held on 18th, 19th, 20th and 21st June, 314 passed.

Of four candidates who gave notice for the whole examination in The Law Society's Intermediate Examination, held on 5th and 6th July, none passed either portion. Of 246 candidates who gave notice for the law portion only, 133 passed, of whom seven were placed in the first class.

The British Transport Commission Legal Service announces that the office of the chief solicitor has been changed to 21A John Street, London, W.C.1 (telephone Holborn 3494).

Mr. Gerald Lacy Addison, solicitor, of Gerrard's Cross, Buckinghamshire, left £65,945.

MR. J. G. BROWN

Mr. John George Brown, retired managing clerk of Messrs. Brooke Taylor & Co., solicitors, of Bakewell, Derbyshire, died recently at Harrogate, aged 80.

MR. J. A. FREEMAN

Mr. John Arthur Freeman, retired solicitor, of Huddersfield, died recently at Harrogate, aged 82. He was admitted in 1899.

MR. H. H. L. HUNT

Mr. Henry Holman Leslie Hunt, solicitor, of Banbury, died recently, aged 56. He was a past president of the Banbury Rotary Club and was at one time a member of the local town council. He was admitted in 1924.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Agriculture Act (Part I) Extension of Period Order, 1956. (S.I. 1956 No. 1159.) 5d.

Bankruptcy (Amendment No. 2) Rules, 1956. (S.I. 1956 No. 1197 (L. 13).) 5d.

These rules, which amend the Bankruptcy Rules, 1952, enable the offices of the Chief Bankruptcy Registrar to be closed on Saturdays and provide that Saturdays are to be excluded in computing time limits of less than six days under the Rules. The provisions for the production of evidence of a judgment founding a bankruptcy notice have been expanded to include judgments of courts other than the High Court or a county court.

Bread (Amendment No. 2) Order, 1956. (S.I. 1956 No. 1181.) 5d.

Chester-Bangor Trunk Road (Llandudno Junction By-Pass) Order, 1956. (S.I. 1956 No. 1185.) 5d.

Chester-Bangor Trunk Road (Llandudno Junction, Conway, Diversion) Order, 1956. (S.I. 1956 No. 1186.) 5d.

Flour (Composition) Regulations, 1956. (S.I. 1956 No. 1183.) 5d.

Flour (Revocation) Order, 1956. (S.I. 1956 No. 1182.) 5d.

Herring Industry (Grants for Fishing Vessels and Engines) (Amendment) Scheme, 1956. (S.I. 1956 No. 1169.) 5d.

Ipswich - Newmarket - Cambridge - St. Neots - Bedford - Northampton - Weedon Trunk Road (Weedon Junction (East) Diversion) Order, 1956. (S.I. 1956 No. 1173.) 5d.

London-Holyhead Trunk Road (Weedon Junction (South) Diversion) Order, 1956. (S.I. 1956 No. 1171.) 5d.

London Traffic (Prescribed Routes) (Croydon) (No. 2) Regulations, 1956. (S.I. 1956 No. 1176.)

London Traffic (Prohibition of Waiting) (Egham, Surrey) Regulations, 1956. (S.I. 1956 No. 1177.) 5d.

National Insurance (Industrial Injuries) (Widow's Benefit and Miscellaneous Provisions) Regulations, 1956. (S.I. 1956 No. 1188.) 5d.

Nature Conservancy (Byelaws) Regulations, 1956. (S.I. 1956 No. 1168.) 5d.

Nigeria (Tribunals of Inquiry) Order in Council, 1956. (S.I. 1956 No. 1210.) 5d.

Police Pensions (No. 2) Regulations, 1956. (S.I. 1956 No. 1158.) 10d.

Police Pensions (Scotland) (No. 2) Regulations, 1956. (S.I. 1956 No. 1180 (S. 57).) 10d.

Post Office Savings Bank Amendment (No. 5) Regulations, 1956. (S.I. 1956 No. 1189.) 5d.

Road Haulage Disposal Board (Abolition) Order, 1956. (S.I. 1956 No. 1184.) 5d.

Rules of the Supreme Court (No. 2), 1956. (S.I. 1956 No. 1191 (L. 12).) 5d. See *ante*, p. 609, and *post*, p. 622.

Sale of Food (Weights and Measures: Bacon and Ham) Regulations, 1956. (S.I. 1956 No. 1165.) 5d.

Sea-Fishing Industry (Fishing Nets) (Amendment) Order, 1956. (S.I. 1956 No. 1202.) 5d.

Stopping up of Highways (London) (No. 27) Order, 1956. (S.I. 1956 No. 1175.) 5d.

Stopping up of Highways (Norfolk) (No. 2) Order, 1956. (S.I. 1956 No. 1174.) 5d.

Trustee Savings Banks (Amendment) (No. 2) Regulations, 1956. (S.I. 1956 No. 1179.) 5d.

Weedon-Atherstone-Brownhills Trunk Road (Weedon Junction (North) Diversion) Order, 1956. (S.I. 1956 No. 1172.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. JACK WIDDUP, committee clerk of Skipton Rural Council, has been appointed assistant clerk of Towcester Rural Council, with effect from 1st October.

Personal Notes

Mr. Anthony Derek Millerchip, solicitor, of Coventry, was married on 26th July to Miss Audrey Mary Shelley, of Coventry.

Mr. Geoffrey Tankard, solicitor, of Bradford, was married on 3rd August, at Scholes, to Miss Geraldine Lucy Watson, of Scholes, Cleckheaton.

Miscellaneous

DEVELOPMENT PLANS

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were, on 30th July, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Islington (in the area Shepperton Road—Sherborne Street—Southgate Road). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 311A). A certified copy of the proposals has also been deposited for public inspection at Islington Town Hall, Upper Street, N.1. The copies of the proposals so deposited, together with copies of relevant extracts of the plan, are available for inspection, free of charge, by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the secretary, Ministry of Housing and Local Government, at Whitehall, London, S.W.1, before 18th September, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 30th July, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Metropolitan Borough of Battersea (at Mill Pond Wharf and Middle Wharf, Nine Elms Lane). A certified copy of the proposals as submitted has been deposited for public inspection at The County Hall, Westminster Bridge, S.E.1 (Room 311A). A certified copy of the proposals has also been deposited for public inspection at Battersea Town Hall, S.W.1. The copies of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4 p.m. Monday to Friday, 10 a.m. and 12 noon Saturday. Any objection or representation with reference to the proposals may be sent in writing to the secretary, Ministry of Housing and Local Government, at Whitehall, London, S.W.1, before 18th September, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the London County Council (reference LP/O.1) and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

THE RULES OF THE SUPREME COURT (No. 2), 1956

(S.I. 1956 No. 1191 (L. 12))

The following extract from these Rules, which come into operation on 1st September, is referred to in a "Current Topic" at p. 609, *ante*.

"5. The following amendments shall be made in Order LXIII:—

(1) In Rule 6 (which prescribes the days on which the offices of the Supreme Court are to be closed) before the word 'Sundays' there shall be inserted the words 'Saturdays (save as otherwise provided by Rule 9 of this Order)' and the words 'Easter Eve' shall be omitted.

(2) Rule 8 shall be omitted.

(3) For Rule 9 there shall be substituted the following Rule:—

'9. Subject in any division of the High Court to any order of the President thereof, the office hours in the offices of the Supreme Court mentioned in column 1 of the following table shall be those shown in columns 2, 3 and 4 thereof:—

Office	Hours of Opening		
	On week-days during sittings	On week-days during vacations	On Saturdays (except Easter Eve)
(1)	(2)	(3)	(4)
Central Office:			
Summons and Order Department	10.30 a.m.—4.30 p.m.	10.30 a.m.—2.30 p.m.	10.30 a.m.—1 p.m.
Crown Office and Associates Department	10.30 a.m.—4.30 p.m.	11 a.m.—2 p.m.	10.30 a.m.—1 p.m.
Supreme Court Taxing Office	10.a.m.—4 p.m.	From 1st August to 16th September, 10 a.m.—2 p.m., and at other times, 10 a.m.—4 p.m.	Closed
Other Departments of the Central Office	10 a.m.—4 p.m.	10 a.m.—2 p.m.	10 a.m.—1 p.m.
Chambers of the Judges of the Chancery Division	10 a.m.—4 p.m.	10 a.m.—2 p.m.	10 a.m.—1 p.m.
Chancery Registrars Office	10 a.m.—4 p.m.	10 a.m.—2 p.m.	10 a.m.—1 p.m.
Principal Probate Registry	10 a.m.—4 p.m.	10 a.m.—4 p.m.	Closed
Other Offices of the Supreme Court	10 a.m.—4 p.m.	10 a.m.—2 p.m.	Closed'

6. For Appendix P there shall be substituted the following Appendix:—

'APPENDIX P

SCALE OF COSTS APPLICABLE TO CASES WITHIN SUBSECTION (4) OF SECTION 47 OF THE COUNTY COURTS ACT, 1934

	Town Cases	Country or Agency Cases
	£ s. d.	£ s. d.
(1) Cases within paragraph (*a*) of sub-s. (4) where claim paid within time limited by indorsement on writ and in which no judgment is signed:—		
(*a*) £40 and over, but less than £75	4 8 –	4 18 –
and, in addition, for each extra defendant	– 8 –	– 8 –
(*b*) £75 and over but less than £300	6 10 –	7 – –
and, in addition, for each extra defendant	– 10 –	– 10 –
(2) Cases within paragraph (*b*) of sub-s. (4) where judgment signed in default of appearance or defence:—		
(*a*) £40 and over but less than £75	5 18 –	6 8 –
and, in addition, for each extra defendant	– 8 –	– 8 –
(*b*) £75 and over but less than £300	8 10 –	9 – –
and, in addition, for each extra service:—		
(i) effected in the same district as any previous service	– 10 –	– 10 –
(ii) effected in a different district	1 – –	1 – –
(3) Cases within paragraph (*c*) of sub-s. (4) where judgment signed under Order XIV:—		
(*a*) £40 and over but less than £75	8 18 –	9 18 –
and, in addition, for each extra defendant	– 8 –	– 8 –
and for adjournment of summons	– 10 –	– 10 –
(*b*) £75 and over but less than £300	12 – –	13 – –
and, in addition, for each extra defendant:—		
(i) served in the same district or appearing by the same solicitor as any other defendant	– 10 –	– 10 –
(ii) served in a different district or appearing by a different solicitor	1 – –	1 – –
and for adjournment of summons	1 – –	1 – –

ADDITIONAL ALLOWANCES APPLICABLE TO ALL THE ABOVE CASES UNLESS TAXATION IS ORDERED

Where substituted service ordered and effected:—

	£ s. d.
(*a*) £40 and over but less than £75	1 – –
(*b*) £75 and over but less than £300	2 – –

Where service out of jurisdiction ordered and effected:—

(*a*) for service in Scotland, Northern Ireland, Isle of Man or Channel Islands	5 – –
(*b*) for service in any other place out of the jurisdiction	8 – –

General Notes

1. All the above items include the addition of the percentage increases allowed by Order 65, Rules 10 and 10A.

2. A "town case" means a case in which the defendant resides within five miles from the General Post Office or, where the case is proceeding in a District Registry, within five miles from the Office of the District Registry.

3. A defendant shall be deemed to be served in a different district when he was served in a different county court district and at a place not less than five miles from the place of a previous service.'"

LIVERPOOL AND MANCHESTER CROWN COURTS

A Home Office letter dated 7th August, 1956, and sent to all clerks to justices in Lancashire, states that the commissions under s. 1 of the Criminal Justice Administration Act, 1956, setting up Crown Courts at Liverpool and Manchester, will come into force on 1st September, and that the Liverpool Crown Court will be opened by the Lord Chancellor on 25th September and the Manchester Crown Court by the Lord Chief Justice on 8th October. After the coming into force of the commissions, cases which would formerly have been committed to assizes or to Liverpool or Manchester quarter sessions for trial or sentence should be committed to the Crown Courts.

After the coming into force of the commissions, all communications for the Crown Court at Liverpool should be addressed to—

THE CLERK OF THE CROWN COURT AT LIVERPOOL,
ST. GEORGE'S HALL,
LIVERPOOL, 1,

and all communications for the Crown Court at Manchester should be addressed to—

THE CLERK OF THE CROWN COURT AT MANCHESTER,
NORTHERN ASSURANCE BUILDINGS,
ALBERT SQUARE,
MANCHESTER.

All recognizances and committals in cases committed to the Crown Court at Liverpool should be made out for appearance at "the next Session of the Crown Court at Liverpool to be holden at Liverpool in and for the West Derby Division of the County of Lancaster on the day of 19 ." All recognizances and committals in cases committed to the Crown Court at Manchester should be made out for appearance at "the next Session of the Crown Court at Manchester to be holden at Manchester in and for the Salford Division of the County of Lancaster on the day of 19 ."

The Clerk of the Crown Courts has requested that the existing practice of the Northern Circuit should be followed, in relation to the Crown Courts, in respect of exhibits, that is to say, that originals should be handed over to the custody of the prosecuting solicitor as an officer of the court for production at the trial; and that copies of written exhibits be forwarded with the original and copy depositions for the use of the court. He has also requested that all papers may be in the hands of the court before the first day of the Session, and that committal proceedings may be fixed for such dates as will allow time for the papers to be copied and forwarded to the court in good time.

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